IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2966 OF 2006

Santosh Sakharam Joshi ..Petitioner

Vs.

Ashok Dattatraya Talwalkar ..Respondent

Mr. A.J. Joshi for petitioner.

CORAM: B.H. MARLAPALLE, J.

Date : March 16, 2007.

P.C.:

1. Heard Mr. Joshi the learned counsel for the petitioner who has filed Regular Civil Suit No.17 of 2005 for a declaration that he is a tenant of the suit premises. In the said suit an application at Exh.5 was filed for temporary injunction and the same was allowed by the learned Joint Civil Judge, Jr.Division, Plaghar vide his order dated 16/4/2005. By the said order the defendant his servants, agents or any other persons claiming through him have been restrained from disturbing or dispossessing the plaintiff from the suit premises during the pendency of the suit. The landlord filed Misc. Civil Appeal No.80 of 2005 and

challenged the order of injunction. The said appeal came to be allowed on the ground that the godown was already demolished and the plaintiff was seeking tenancy in respect of the godown premises. The Lower Appellate Court also noted that if the plaintiff succeeds in the pending suit for declaration, he may have the right of re-entry if and when any construction is put up on the said plot or part of it. The plaintiff is aggrieved by this order dated 21/3/2006 passed by the learned Additional District Judge at Palghar.

2. There is no dispute that the godown was demolished and, therefore, there was no question of any restraining order operating in favour of the plaintiff and as was passed by the trial court. The plaintiff's right has been protected in case he finally succeeds in the pending suit. Hence no interference is called for in the impugned order in this petition filed under Article 227 of the Constitution.

3. Hence, the petition is rejected summarily.

However, the trial of the suit is expedited and in case the plaintiff's succeeds, as noted by the Lower Appellate Court, his right for re-entry will be governed as per the law.

(B.H. Marlapalle,J.)